

II. FINDINGS OF FACT

2.1 Appellant Dwight Long was a Program Manager A and a permanent employee for Respondent South Puget Sound Community College (SPSCC). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on May 4, 2000.

2.2 Appellant had been employed at SPSCC for 19 years. Appellant had no history of corrective or disciplinary actions. At the time of the actions giving rise to this appeal, Appellant managed the SPSCC gymnasium and fitness center. He supervised hourly employees and oversaw the use of the gym. Although Appellant had a state-owned computer with Internet access in his office, his duties did not require him to use the Internet.

2.3 Appellant was an excepted workweek employee. During basketball season, it was not uncommon for Appellant to work long hours. At times, he worked from 7:30 a.m. to 11 p.m. As an excepted workweek employee, Appellant was expected to adjust his work hours as needed to accomplish the duties and responsibilities of his position.

2.4 Appellant was aware of the college's policies regarding acceptable use of the college's computer system and the Internet. The policies state that use of the college's computer network during work hours is restricted to education purposes. In addition, Appellant was aware of the state rules and regulations prohibiting the use of state property for personal or private gain. To assure that all staff and faculty were aware of policies, rules and regulations, by e-mail on March 1, 1999, Frankie Schlender, Dean of Information Technology Services, provided the policies, rules and regulations to all SPSCC staff and faculty.

1 2.5 In late January 2000, the college was experiencing slow downs and crashing of its computer
2 operating system. These problems adversely affected student registration activities and the college's
3 ability to use its financial system.

4 2.6 On January 27, 2000, Ms. Schlender reminded staff and faculty about what was considered
5 acceptable use of college technology and warned them that files and records were kept that showed
6 inappropriate activities. She also advised staff that the college's bandwidth was beginning to slow
7 down. Ms. Schlender asked staff to evaluate the appropriateness of their current computer use and
8 cautioned them not to waste the college's resources on computer related activities that should occur
9 at home rather than at work.

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11 2.7 On February 25, 2000, Ms. Schlender informed staff and faculty that the computer network
12 needed to be available for work related activities and instructed them not to use certain non-work
13 related software at work.

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15 2.8 In February 2000, College Information Technology Services (IT) staff began to investigate
16 the cause of the college's network problems. During the course of the investigation, IT staff
17 discovered that Appellant's Internet activities frequently accounted for 40 percent or more of the
18 college's total Internet usage. While Appellant's activities were not the root cause of the problems,
19 they were a contributing factor.

20 2.9 Because Appellant's Internet usage was the highest on campus, IT staff began to look deeper
21 into the system and determined that Appellant was using an automatic surfing program to visit
22 Internet sites that paid people to click on them. Appellant does not deny that he used college
23 computers and the college computer system to engage in this activity during work hours.

24
25 2.10 Roberta Jones, Vice President for Human Resources, was Appellant's appointing authority.
26 Prior to determining the level of discipline, Ms. Jones presented Appellant with the information that

1 the IT staff had discovered. She subsequently met with Appellant so that he could respond to the
2 information. Appellant did not deny that he engaged in these activities but stated that he thought
3 the information was misleading because he had not actually received any money for surfing the
4 Internet. Appellant said that he was bored at work and that he was addicted to surfing the Internet.

5 2.11 Ms. Jones considered all of the information, including Appellant's responses. She
6 determined that Appellant neglected his duty when he spent hours on the college's computer
7 engaging in non-work related activities. She felt that his activities rose to the level of misconduct
8 because they were intended for personal gain and they contributed to the overall network problems
9 the college was experiencing. She also determined that Appellant's activities were in violation of
10 the college's policies and state rules and regulations regarding appropriate use of the college's
11 computer equipment and Internet access. Ms. Jones concluded that Appellant's activities
12 constituted a conflict of interest, adversely impacted the college's mission of serving students, and
13 that dismissal was the appropriate disciplinary sanction.
14

15 2.12 By letter dated April 10, 2000, Ms. Jones notified Appellant of his dismissal, effective April
16 25, 2000, for neglect of duty, gross misconduct, conflict of interest and willful violation of rules and
17 regulations of the college and state of Washington.

18 **III. ARGUMENTS OF THE PARTIES**

19 3.1 Respondent argues that Appellant engaged in misconduct when he knowingly violated
20 college policies and state rules and regulations and purposefully placed software that automatically
21 surfed the Internet on a college computer with the intent of making money. Respondent contends
22 that Appellant was aware of the problems the college was experiencing with its computer system and
23 yet he continued to engage in activities that aggravated the problem. Respondent contends that
24 Appellant's misconduct was a serious matter that warranted serious action and that termination was
25 warranted.
26

1 3.2 Appellant argues that he worked long hours without compensation and that he used the
2 Internet at work when he was bored. Appellant asserts that the college misunderstood the
3 information the IT staff provided concerning his Internet activities and asserts that he did not
4 neglect his duties when he engaged in these activities. Appellant contends that he had no history of
5 performance problems or discipline and that he should have been given an opportunity to correct his
6 behavior. Appellant asserts that termination is a life-long punishment and is not a suitable
7 disciplinary action under these circumstances and in light of his long, unblemished history with the
8 college.

10 IV. CONCLUSIONS OF LAW

11 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
12 herein.

13 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
14 the charges upon which the action was initiated by proving by a preponderance of the credible
15 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
16 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
17 Corrections, PAB No. D82-084 (1983).

19 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
20 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
21 of Social & Health Services, PAB No. D86-119 (1987).

22 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
23 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

1 4.5 Willful violation of published employing agency or institution or Personnel Resources
2 Board rules or regulations is established by facts showing the existence and publication of the rules
3 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
4 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
5 Health Services, PAB No. D93-053 (1994).

6 4.6 Respondent has met its burden of proof that Appellant neglected his duty when he
7 extensively used the college's computer system during work hours in an attempt to achieve personal
8 gain. Appellant's activities violated college policies and state rules and regulations and rose to the
9 level of gross misconduct because his activities adversely impacted the services the college
10 provided to students and adversely impacted staff's ability to utilize the computer system for work-
11 related activities.

12
13 4.7 Under the totality of the undisputed facts and circumstances presented here, Respondent has
14 met its burden of proving the charges in the disciplinary letter and has proven that the disciplinary
15 sanction of dismissal is appropriate. Therefore, the appeal should be denied.

16
17 **V. ORDER**

18 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Dwight Long is denied.

19 DATED this _____ day of _____, 2001.

20 WASHINGTON STATE PERSONNEL APPEALS BOARD

21 _____
22 Walter T. Hubbard, Chair

23 _____
24 Gerald L. Morgen, Vice Chair

25 _____
26 Leana D. Lamb, Member

Personnel Appeals Board
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